

May 7, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: *Closed Captioning and Video Description of Video Programming – Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*
CG Docket No. 06-181

CGB-CC-0117 – Reply to Opposition of Telecommunications For the Deaf and Hard of Hearing, Inc. et al, to Petition for Exemption from Closed Captioning Requirements filed by Rancho Palos Verdes Broadcasters, Inc.

Dear Ms. Dortch:

Rancho Palos Verdes Broadcasters, Inc. ("RPVB"), the licensee of Station KXLA(TV), Rancho Palos Verdes, California (the "Station"), hereby **replies to the opposition ("Opposition")** of Telecommunications for the Deaf and Hard of Hearing, Inc. et al ("TDI") to RPVB's petition ("Petition") **seeking exemption from the one hundred percent (100%) closed captioning requirements for new English-language programming set forth in Section 79.1(b)(1) of the Commission's Rules, as well as from any one hundred percent (100%) requirements applicable to bilingual and multilingual programming.'**

On December 27, 2005, RPVB submitted its Petition for exemption from the Commission's closed captioning requirements pursuant to **the undue burden standard in Section 79.1(f) of the Commission's Rules ("Undue Burden Exemption").** In its Petition, RPVB submitted two **separate requests for exemption.** First, RPVB requested exemption from the one hundred percent (100%) new English-language programming requirement, based on **equipment, construction and training delays experienced by RPVB in its efforts to meet the 100% requirement.** Based on the unresolved nature of these issues as of January 1, 2006, RPVB requested temporary waiver of the 100% new English-language requirements until April 1, 2006.²

Second, RPVB informed the Commission **that the Station's programming includes Korean, Vietnamese and Japanese-language programs and mixed Asian-language/English-language programs in addition to English-language programs. As noted in the Petition, the**

¹ This Reply is timely filed within 40 days of TDI's Opposition. See *Public Notice*, CG Docket No. 06-181, 21 FCC Rcd 13437(2006).

² See Petition at Attachment 1 at I.

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Commission's closed captioning rules do not specifically address the regulatory treatment appropriate for such bilingual and multilingual Stations. RPVB submitted Reply Comments in *Closed Captioning of Video Programming*, CG Docket No. 05-231 (the "Closed Captioning Rulemaking"), requesting clarification of the regulatory classifications assigned to bilingual and multilingual programming, specifically to Stations that broadcast programs containing both English-language and other foreign-language segments, and to Stations that broadcast separate English-language and other foreign-language programs.³ As stated in RPVB's Reply Comments, the Commission's current benchmark approach to captioning assumes that English and other foreign-language programming are strictly either/or in nature. The inclusion of English and other foreign-language segments within the same program, or separate English and other foreign-language programs on the same Station, present novel captioning issues that should properly be addressed by the Commission before the 100% new programming deadline is applied to bilingual and multilingual Stations. Accordingly, RPVB respectfully requested that the Commission waive the 100% closed captioning deadline vis-à-vis the Station's bilingual and multilingual programming until such time as the Commission concludes the Closed Captioning Rulemaking and determines how to treat such Stations.

At this time, and in response to TDI's Opposition, RPVB wishes (1) to update the Commission concerning RPVB's ability to meet the one hundred percent (100%) new English-language programming closed captioning requirements, and (2) to reaffirm RPVB's request for exemption from one hundred percent (100%) closed captioning requirements with respect to mixed English/other foreign-language programming until such time as the Commission determines the regulatory classification applicable to Stations offering bilingual and multilingual programming.

First, RPVB has resolved all equipment, construction and training issues and its temporary waiver request with respect to the Commission's one hundred percent (100%) new English-language programming requirement is now moot. *See* Declaration of Ronald L. Ulloa, President of RPVB, attached hereto as Exhibit A.

Second, RPVB wishes to reiterate that its efforts to close caption its bilingual programming have been frustrated by the lack of clear regulations combined with underdeveloped markets for the closed captioning of other foreign-language and mixed English/other foreign-language programming. Marketplace realities and regulatory uncertainty continue to support RPVB's request for an Undue Burden Exemption. As a general matter, the

RPVB's Reply Comments are available electronically on the Commission's website in CG Docket No. 05-231. A copy of RPVB's Reply Comments was attached to the Petition as Exhibit A to Attachment 1.

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market for bilingual and multilingual captioning is less developed than the individual English-language captioning market or even the Spanish-language captioning market. The market for bilingual and multilingual captioning involving languages other than Spanish – Korean, Vietnamese and Japanese, in particular – is basically nonexistent. The Commission currently exempts foreign language programming (other than Spanish) from its captioning requirements.⁴ Many Asian-language video program providers do not close caption their programming at all. And RPVB has found that Asian-language video providers are not willing to close caption programs for single Stations when other Stations are not required to meet closed captioning requirements. Closed captioning services are thus not available for nearly all the bilingual and multilingual Asian-language programs that RPVB would broadcast.

RPVB submits that its description of the current economic and regulatory conditions facing bilingual and multilingual programming providers satisfies the required showing for an Undue Burden Exemption.⁵ Under Section 713 of the Communications Act of 1933, as amended, and Section 79.1(f) of the Commission's Rules, the Commission must consider the following factors when determining whether closed captioning requirements impose an undue burden on a petitioner: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.⁶ A petitioner seeking an undue burden exemption must support its request with evidence sufficient to demonstrate that compliance with closed captioning requirements would cause an undue burden, including detailed showings, supported by affidavit, of any facts or considerations relied upon by the petitioner.'

TDI's boilerplate Opposition alleging RPVB's failure to satisfy the showing required under 79.1(f) is wide of the mark. With respect to the first factor – the nature and cost of closed captioning – RPVB indicated that closed captioning services are simply not available for English/other foreign-language programs given the virtually nonexistent market for Asian-language closed captioning services, particularly Korean, Vietnamese and Japanese. Foreign language programming (other than Spanish) is currently exempt from the Commission's closed

⁴ See 47 C.F.R. § 79.1(d)(3).

The Commission has authority to grant a petition for exemption from closed captioning requirements upon a showing that compliance with the requirements would impose an undue burden on the video programming provider or video owner. See 47 U.S.C. § 613(c). Congress defined "undue burden" as a "significant difficulty or expense." *Id.*

⁶ See 47 U.S.C. § 613(c); 47 C.F.R. § 79.1(f).

See 47 C.F.R. §§ 79.1(f)(2)-(3), 79.1(f)(9).

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captioning requirements,⁸ and hence many foreign-language video providers are not willing to close caption for a single Station when other Stations do not require such captioning efforts of them at this time.⁹ With regard to the second and third factors – the impact on the program provider's operations, and the financial resources of the program provider, respectively – RPVB explained that given the scarcity of available Asian-language and bilingual/multilingual captioning services, closed captioning its English/Asian-language programs is not a realistic option, irrespective of RPVB's financial capabilities.¹⁰ With respect to the fourth factor – the type of operation of the program provider – again, RPVB noted the bilingual/multilingual nature of its programming, and the unavailability of closed captioning services for such programming. Finally, as required by the Commission's Rules, RPVB's showing was supported by the Declaration of RPVB's President, Ronald L. Ulloa.¹¹

As demonstrated in RPVB's Petition, and as set forth above, current marketplace and regulatory conditions amount to a "significant difficulty," as that term is used in Section 79.1(f)(2) of the Commission's Rules,¹² and RPVB should therefore be exempt from any closed captioning obligations it may have with respect to its bilingual and multilingual programming. While RPVB understands TDI's desire to secure improved closed captioning services for deaf and hard of hearing individuals, TDI's indiscriminating campaign against all programming providers and distributors claiming an exemption is grossly over-inclusive.¹³ TDI's decision to file a mass-produced, form Opposition in the instant proceeding – scarcely heeding the substance of RPVB's claims, the nature of RPVB's programming and the nonexistent captioning market available for such programming – is fundamentally misguided. No matter how laudable its motives, TDI's volume-over-substance tactics represent an abuse of Commission process. Notwithstanding TDI's boilerplate claims, RPVB qualifies for an exemption under the Commission's Undue Burden Exemption and TDI's ill-advised Opposition must therefore be dismissed.

⁸ See 47 C.F.R. § 79.1(d)(3).

⁹ See Petition at Attachment 1 at 2.

¹⁰ See *id.*

¹¹ See Petition at Attachment 2.

¹² See 47 C.F.R. § 79.1(f)(2).

¹³ TDI has submitted a slew of oppositions to various parties' requests for exemptions from the Commission's closed captioning requirements, including the Opposition to RPVB's Petition.

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Should there be any questions in regard hereto, please communicate with the undersigned.

Respectfully submitted,

Rancho Palos Verdes Broadcasters, Inc.

By: 

Barry A. Friedman

DECLARATION

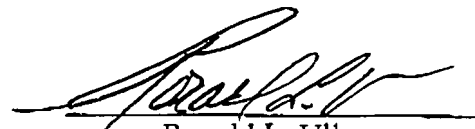
I, **Ronald L. Ulloa**, declare under penalty of perjury that the following is true and correct:

1. I am the President of Rancho Palos Verdes Broadcasters, Inc. ("RPVB"), the licensee of Station KXLA(TV), Rancho Palos Verdes, California (~~the~~ "Station").

2. The Station has resolved the equipment, construction and training issues that necessitated the Station's request for temporary waiver of the Commission's one-hundred percent (100%) **new** English-language closed captioning requirements, and that request is now moot.

3. The Station's programming includes Korean, Vietnamese, **and** Japanese-language programs. mixed Asian/English-language programs **and** English-language programs, RPVB has encountered significant difficulty in obtaining closed captioning services for its bilingual and multilingual programming. Given that the Commission exempts foreign language programming (other ~~than~~ **Spanish**) from its closed captioning requirements, Asian-language video program providers do not close caption their programs. These video providers **are** not willing to close caption **programs** for single Stations when other Stations are not required to meet closed captioning requirements. Closed captioning services are thus not available for the bilingual and multilingual segments and programs that RPVB would broadcast.

3. Executed at Los **Angeles**, California this 7th day of May, 2007.



Ronald L. Ulloa

CERTIFICATE OF SERVICE

I, Barry A. Friedman, do hereby **certify** that, on May 7, 2007, a copy of the foregoing Reply to the **Opposition** of Telecommunications for the Deaf and Hard of Hearing, Inc. et al to the Petition for **Exemption** from Closed **Captioning** Requirements filed by Rancho Palos Verdes Broadcasters, Inc., as filed with **the** Federal Communications Commission in GG Docket **Nu. 06-181**, CGB-CC-0117, was served by first class U.S. mail, **postage prepaid**, upon the following:

Paul O. Gagnier
Troy F. Tamer
Danielle C. Burt
Bingham McCutchen LLP
2020 K Street, NW
Washington, DC 20007

Claude L. Stout
Executive Director
Telecommunications for the Deaf
and Hard of Hearing, Inc.
8430 Fenton Street, Suite 604
Silver Spring, MD 20901

Nancy J. Bloch
Chef Executive Officer
National **Association** of the Deaf
8630 Fenton Street, Suite 820
Silver Spring, MD 20910

Cheryl Heppner
Vice Chair
Deaf and Hard of **Hearing** Consumer
Advocacy Network
3951 Pender Drive, Suite 130
Fairfax, VA 22030

Brenda Battat
Associate Executive Director
Hearing Loss Association of America
7910 Woodsmont Avenue, Suite 1200
Bethesda, MD 20814

Edgar Palmer
President
Association of Late-Deafened Adults, Inc.
8038 Macintosh Lane
Rockford, IL 61107

Jenifer Simpson
Senior Director, Telecommunications and
Technology Policy
American Association of People with
Disabilities
1629 K Street, NW, Suite 503
Washington, DC 20006

Ed Kelly
Chair
California Coalition of Agencies **Serving the**
Deaf and Hard of **Hearing**
6022 Cerritos Avenue
Cypress, CA 90630



Barry A. Friedman